S.B. CIVIL WRIT PETITION NO.5301/2005
Rishi Raj
Vs.
State of Raj. & Ors.

DATE OF ORDER : 25.5.2007

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri S.K. Tewari for the petitioner.
Shri B.S. Chaba Dy.GA for the State.

Heard learned counsel for the parties.

This petition has been filed with the grievance that even though the petitioner had been acquitted in criminal case lodged against him for offence under Section 148 and 323 IPC by order of the trial court dated 6.3.1992. But because in that case he was arrested because of the standing warrant issued by the court which was not cancelled even after his acquittal.

Learned counsel submitted that the petitioner had informed the police about this fact as also the Presiding Officer when he was produced before him at the time of remand but no heed was paid to his request. It appears that the standing warrant was issued against the petitioner because of his absence from the trial and the standing warrant was not cancelled even after the judgment in the mean case.

In the facts of the case, the petitioner has prayed for direction upon the respondents to pay him Rs.5 lacs as compensation for keeping him in illegal custody for four days.

Shri B.S. Chaba, learned Dy.GA has opposed the writ petition and

submitted that the prayer of the petitioner cannot be accepted because this is disputed whether he actually informed the police official or the Presiding Officer about the fact that he had been acquitted. This prayer has to be examined in the context of the conduct of petitioner that he absconded from the trial, and therefore, standing warrant had been issued to apprehend him and even if the claim of the petitioner that it was due to negligence or mala fide of any police official is accepted, the question remains that why the petitioner not impleaded any one of them by name as party and adjudication of such disputed question of fact can be made only in the civil suit and not in the writ petition.

Having heard learned counsel for the parties and perused the material on record, I find that the circumstances in which the standing warrant was issued, why was not it cancelled and who was responsible for not getting it cancelled and to what extent such negligence was attributable to the petitioner himself and if at all it was the negligence of police official or if any of them acted mala fide, who was that officer, for what reason he acted mala fide and finally whether the petitioner informed the police official or the Presiding Officer are all such disputed questions of fact which cannot be decided in the absence of proper evidence being led by either side. Remedy of writ cannot therefore be the proper remedy for adjudication of the

controversy involving such disputed questions of fact.

While, therefore, not entertaining the writ petition, the petitioner is at liberty to take his remedy before the appropriate civil court.

With these observations, the writ petition is disposed of.

(MOHAMMAD RAFIQ),J.

Skant/-